

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KELLEY K. GRAMMAR
Claimant

VS.

U.S.D. 497

Self-Insured Respondent

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Docket No. 1,017,042

ORDER

Claimant requested review of the June 16, 2006 Award by Administrative Law Judge (ALJ) Brad E. Avery. This matter was placed on the summary docket and deemed submitted as of August 28, 2006.

APPEARANCES

Chris Miller, of Lawrence, Kansas, appeared for the claimant. Kip A. Kubin, of Kansas City, Missouri, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ awarded claimant a 2 percent impairment to the left lower extremity based upon the opinions expressed by Dr. Peter Bieri, the court appointed independent medical examiner.¹

¹ As evidenced by the parties' briefs, they are in agreement that the only issue in dispute for purposes of this appeal is the nature and extent of claimant's impairment. And further, that whatever the impairment, it is limited to a scheduled functional injury.

The claimant requests review of this determination alleging the ALJ should have awarded a 15 percent impairment to the left lower extremity, based upon the testimony of Dr. Edward Prostic, an orthopaedic surgeon.

Respondent argues the ALJ's Award should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board finds that the ALJ's Award should be affirmed.

There is no dispute as to the compensability of claimant's injury. The only issue in dispute is the nature and extent of her permanent impairment. In the Award, the ALJ summarized the evidence on this issue as follows:

The court adopts the report of its independent medical examiner, Dr. Bieri, and finds claimant has a functional impairment of two percent to the left lower extremity. Dr. Bieri's assessment is identical to that of Dr. Fevurly. Dr. Prostic also rated the claimant and found she had a 15 percent impairment of the lower extremity. In addition to the two percent impairment found by Drs. Bieri and Fevurly, Dr. Prostic awarded seven percent lower extremity for a "tracking problem of the patella" and 10 percent of the lower extremity for "misalignment of the leg."

The court was unable to detect in either the reports of Dr. Bieri or Dr. Fevurly similar diagnoses. Dr. Prostic's [report] does not attribute the claimant's "tracking problem" or "misalignment" to claimant's work related accident. For these reasons, the court finds the report of Dr. Bieri more credible in regard to impairment."²

This recitation accurately sets forth the differences between the opinions expressed by Dr. Prostic and Drs. Bieri and Fevurly. Put simply, Dr. Prostic identified two additional physical conditions not otherwise identified by Drs. Bieri and Fevurly. And Dr. Prostic failed to connect those conditions with the claimant's accident. Claimant suggests that because Dr. Bieri "spent one minute with Ms. Grammar, in examination and evaluation" that "he could provide no meaningful examination of her condition."³

In making his finding the ALJ weighed these differences and concluded that he was more persuaded by the opinions offered by Dr. Bieri, the independent medical examiner. The Board finds the ALJ's decision to be well reasoned and hereby affirms the same.

² ALJ Award (June 16, 2006) at 2.

³ Claimant's Brief at 6 (filed July 24, 2006)(referencing R.H. Trans. (Apr. 4, 2006 at 7).

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated June 16, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Attorney for Claimant
Kip A. Kubin, Attorney for Self-Insured Respondent